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Human Rights Committee

Concluding observations on the second periodic report of Bosnia and Herzegovina

Addendum

Information received from Bosnia and Herzegovina on follow-up to the concluding observations*

[15 November 2013]

1. The Human Rights Committee considered the second periodic report submitted by Bosnia and Herzegovina (CCPR/C/BIH./2) at its 2934th and 2935th meetings (CCPR/C/SR.2934 and CCPR/C/SR.2935), held on 22 and 23 October 2012. At its 2945th meeting (CCPR/C/SR.2945), held on 31 October 2012, it adopted concluding observations.

2. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 6, 7 and 12 of the concluding observations.

> *Paragraph 6. The Committee recalls its previous recommendation (CCPR/C/BIH/CO/1, para. 8) and expresses its regret that the Constitution and Election Law of the State party continues to exclude persons who do not belong to one of the State party's "constituent peoples", namely Bosniaks, Croats and Serbs, from being elected to the House of Peoples and to the tripartite Presidency of Bosnia and Herzegovina. The Committee particularly regrets that notwithstanding its previous recommendations and the judgment of the European Court of Human Rights in the case of Dervo Sejdic and Jakob Finci, Case No. 27996/06, handed down on 22 December 2009, efforts to amend the Constitution have stalled such that the law continues to exclude citizens from certain groups from participating in elections that were held in October 2010 (arts. 2, 25 and 26).*
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> **The Committee reiterates its previous concluding observations (CCPR/C/BIH/CO/1, para. 8) to adopt an electoral system that guarantees equal enjoyment of the rights of all citizens under article 25 of the Covenant**

* The present document is being issued without formal editing.

irrespective of ethnicity. In this regard, the Committee recommends that the State party should, as a matter of urgency, amend its Constitution and Election Law to remove provisions that discriminate against citizens from certain ethnic groups from participating in elections.

3. In connection with the above, we hereby present the following information:

4. The representatives of the Roma and Jewish communities filed a petition with the European Court of Human Rights for violation of freedom of choice and discrimination of "Others" who do not belong to one of the constituent peoples of Bosnia and Herzegovina (BiH). This is the case of *Dervo Sejdic and Jakob Finci* v. *BiH*. On 22 December 2009, the Grand Chamber of the European Court of Human Rights in Strasbourg, France, rendered judgment No. 27996/06 in favour of the applicants ordering BiH to bear legal costs of the applicants and to proceed with the constitutional changes that would be compatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

5. With the aim of introducing the relevant constitutional and legislative amendments, the Council of Ministers adopted an Action Plan on 4 March 2010 and appointed a Working Group to draft them. The Central Election Commission adopted the Action Plan on 18 February 2010, stating in detail the provisions which should be adopted and possible steps to be taken if the amendments are not adopted before the scheduled general election by the end of May the same year.

6. The Council of Ministers appointed a Working Group which did not meet the deadline for reaching an agreement on proposed constitutional amendments because the leading politicians had a disagreement on substantive issues. After that, on 22 April 2010, the Council of Ministers considered the report of the Working Group responsible for the preparation of constitutional and legislative amendments and gave it a new deadline for discharging the task. This means that also the October election in Bosnia and Herzegovina passed without Bosnia and Herzegovina having complied with the judgment of the European Court of Human Rights.

7. Despite these efforts, BiH has so far failed to enforce the judgment the reason being that the Ad Hoc Committee has not managed to reach an agreement required for proposing amendments to the BiH Constitution, but it continues efforts to find a way to enforce the judgment in accordance with the proposals and decisions of the BiH Parliamentary Assembly.

8. Bosnia and Herzegovina has failed to comply with its obligation arising from the European Convention on Human Rights, which is the legal basis (*iustus titulus*) for the enforcement of the judgment of the European Court of Human Rights (*Sejdic – Finci* v. *BiH* case).

Paragraph 7. While appreciating efforts to deal with war crime cases such as the implementation of the National War Crimes Processing Strategy, the Committee remains concerned at the slow pace of prosecutions particularly those relating to sexual violence, as well as lack of support to victims of such crimes. The Committee is also concerned at the lack of efforts to harmonize jurisprudence on war crimes among entities, and that entity-level courts use the archaic criminal code of the former Socialist Federal Republic of Yugoslavia (SFRY) that does not, inter alia, define crimes against humanity, command responsibility, sexual slavery and forced pregnancy. The Committee is concerned that this might affect consistency in sentencing among entities (arts. 2 and 14).

The State party should expedite the prosecution of war crime cases. The State party should also continue to provide adequate psychological support to victims

of sexual violence, particularly during the conduct of trials. Furthermore, the State party should ensure that the judiciary in all entities strongly pursues efforts aimed at harmonizing jurisprudence on war crimes and that charges for war crimes are not brought under the archaic criminal code of the former SFRY which does not recognize certain offences as crimes against humanity.

9. The High Judicial and Prosecutorial Council of BiH (HJPC), together with courts and prosecutor's offices that are responsible for monitoring and prosecution of war crimes, has developed the plans for processing of war crime cases and appropriate instructions covering also witness support and protection measures. Nevertheless, the funding for the implementation of these measures is yet to be secured. Individual needs assessments have been prepared for all prosecutor's offices for 2013, but due to lack of funds these needs assessments have not been implemented and the HJPC has written to the ministries of justice and finance at the entity and cantonal level on four occasions asking them to secure the funding, which was noted at the Structured Dialogue meeting held on 8 April 2013.

10. With respect to this recommendation urging for more expedited prosecution of war crimes and harmonization of case law in war crime cases, the relevant judicial authorities in charge (courts and prosecutor's offices) are those that are dealing with this type of cases. However, the BiH Ministry of Justice, through its representative in the National War Crimes Strategy Implementation Supervisory Body, receives relevant information pertaining to the work of the Supervisory Body and the activities undertaken to expedite the resolution of war crime cases and other relevant matters. As part of these activities and with a view to more efficient prosecution of war crimes, the BiH Council of Ministers has approved the increase in the number of prosecutors in the Prosecutor's Office of BiH and the HJPC has advertised these positions. With respect to retroactive application of criminal legislation, in its six-month report the Supervisory Body expressed the view that the decision of the European Court of Human Rights in the case *Maktouf and Damjanovic* v. *Bosnia and Herzegovina* resolves the issue of retroactive application of criminal legislation and ensures uniform application of legislation and equality of citizens before national courts in war crime cases.

11. With respect to harmonization of case law, the National War Crimes Strategy Implementation Supervisory Body has so far organized several meetings with the President of the Court of BiH, the presidents of the Supreme Courts of the Entities, the President of the Appellate Court of Brcko District and judges working on war crime cases, as well as an international conference on "Case Law in the Application of Criminal and Substantive Legislation in the War Crime Cases in Bosnia and Herzegovina and the Region". The focus of the Conference was the harmonization of case law in war crime cases with a view to ensuring legal security and equality of citizens before the law.

12. Based on the set criteria, a large number of cases has been referred for prosecution to Entity and Brcko District jurisdictions, and the National War Crimes Strategy Implementation Supervisory Body approved the proposed needs assessments in terms of human and material resources required for implementation of the National War Crimes Strategy in the context of the Instrument for Pre-accession Assistance (IPA) Component II 2012/2013 for entity-level courts and prosecutor's offices, which has been delivered to the European Commission for its final decision.

13. Pending issues related to regional cooperation among Bosnia and Herzegovina, the Republic of Serbia and the Republic of Croatia have been resolved. As a result of that, the Prosecutor's Office of BiH and the Office of the War Crimes Prosecutor of the Republic of Serbia signed the Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide on 31 January 2013. Such an agreement was also signed on 3 June 2013 between the Prosecutor's Office of BiH and the State Attorney's Office of the Republic of Croatia.

14. The Federal Ministry of Justice supports the efforts of the National War Crimes Strategy Implementation Supervisory Body, and the representative of the Ministry is actively involved in its work. The Ministry also provided the information that it will promptly fulfil all relevant obligations relating to the implementation of specific objectives of this Strategy with respect to the powers of the Federal Ministry of Justice over relevant courts.

15. More than four years ago, the Prosecutor's Office of Brcko District BiH increased the classified number of posts and employed new staff members (three prosecutors and three legal associates) who work only with war crime cases. Also, in cooperation with other institutions, efforts are being made to provide witnesses with the necessary psychological support, as needed.

16. The Police of Brcko District BiH has employed a psychologist, and the Prosecutor's Office has the possibility of using its services to provide psychological support to traumatized victims and witnesses.

17. When it comes to the application of criminal legislation in war crime cases, Brcko District BiH applies the Criminal Code of the former Socialist Federal Republic of Yugoslavia (SFRY) as the law in force at the time of the offence. As has been pointed out, it is the courts of Brcko District that create this kind of case law, which is then only followed by the Prosecutor's Office. However, this has no effect on the prosecution of crimes against humanity since this type of crime is not under the jurisdiction of local judiciary.

18. In cooperation with other institutions, organizations and other relevant stakeholders, the Prosecutor's Office will continue to undertake measures and activities aimed at meeting all relevant recommendations of the Human Rights Committee, in accordance with its responsibilities prescribed by law. The extensive practice of the Prosecutor's Office in terms of investigation and prosecution of crimes, which in their essence contain elements of hate, hate speech or any type of discrimination and which resulted in convictions, was particularly underlined.

19. Following the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement), the territory of Brcko municipality was proclaimed a district in accordance with the Final Award of the Arbitral Tribunal, and as such it is the condominium (owned by both Entities).

20. Article 1, paragraph 4, of the Statute of the Brcko District BiH (*Official Gazette of the Brcko District BiH*, Nos. 1/00, 24/05, 17/08, 39/09 and 2/10) stipulates that the Constitution of Bosnia and Herzegovina, as well as relevant laws and decisions of the institutions of Bosnia and Herzegovina, are directly applicable throughout the territory of the District.

21. Brcko District BiH is making significant efforts to expedite the processing of war crime cases, and to that end the Memorandum of Understanding between the United Nations Development Programme, the Basic Court of the Brcko District BiH, the High Judicial and Prosecutorial Council of BiH, Brcko District Judicial Commission and the Government of the Brcko District BiH was prepared.

22. The Memorandum of Understanding defines the basis for the implementation of the project component entitled "Establishment of a Witness and Victim Support System in Brcko District BiH and Mostar", where the beneficiaries are the Basic Court of Brcko District BiH and the Prosecutor's Office of Brcko District BiH. The courts of Brcko District BiH apply the Criminal Code of the former SFRY for war crime cases.

23. The Cantonal Prosecutor's Office of the Sarajevo Canton greatly respects and appreciates recommendation No. 7 of the Human Rights Committee, which refers to the

concern at the slow pace of prosecution of war crimes, but at the same time it wants to point out that currently there is only one war crime case in the Prosecutor's Office of BiH, where a victim was subjected to sexual violence during the war. This case is in an investigation phase and there is an international arrest warrant issued for a suspect at large. Despite that fact, following the signing of the Protocol on Cooperation between the Prosecutor's Offices of BiH and Serbia, the Prosecutor's Office has taken some concrete actions in order to refer this case for prosecution to Serbia, where the suspect is hiding. Also, it should be mentioned that the Prosecutor's Office has succeeded in prosecuting a number of war crime cases, which resulted in final convictions where the injured parties were victims of sexual violence committed during the war.

24. In terms of institutional support to victims of sexual violence in the course of criminal proceedings, this segment of victim protection is said to be greatly improved since 2010 onwards, so that the victims have the support of a psychologist or of an officer providing support for vulnerable witnesses and witnesses under threat both in courts and prosecutor's offices in the BiH Federation.

25. Finally, with regard to the harmonization of case law and application of the relevant substantive legislation, that is the application of criminal legislation, either that of the SFRY or of the BiH Federation Criminal Code, which entered into force on 1 March 2003, this issue is said to be problematic and it should be viewed in the light of a recent decision rendered by the European Court of Human Rights in Strasbourg in the *Maktouf* and *Damjanovic* cases, which states that from the aspect of equality of citizens before the law these cases should have been prosecuted under the earlier Criminal Code of the SFRY as a more lenient law providing for lesser sanctions in order to avoid the retroactive application of more stringent legislation.

26. Pursuant to the recommendation from the forty-fifth meeting of the Implementation Supervisory Body for the National War Crimes Strategy, this issue and the issue of harmonization of case law should in the future be regularly discussed at the general meetings of judges of all courts in BiH.

> *Paragraph 12. The Committee is concerned that article 21 of the Law on the Rights of Demobilized Soldiers and the Families, applicable in the Federation of Bosnia and Herzegovina, provides that in order for family members of missing persons to accede to or maintain a monthly pension, they have to commence proceedings to declare the missing person deceased within two years after the law comes into force. Furthermore, the Committee is concerned that in the Republic Srpska, municipal courts require the production by family members of evidence in the form of a death certificate that their relative has been subjected to enforced disappearance when assessing a request for a disability pension under article 25 of the Law on the Protection of Civilian Victims of War and article 190 of the Law on Administrative Procedure. The Committee is concerned that this practice raises issues under articles 2, 6 and 7 of the Covenant as missing persons and those subjected to enforced disappearance are presumed dead when efforts are being made to find them (arts. 2, 6 and 7)*
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> **The State party should abolish the obligation in cases of disappearance which makes the right to compensation dependent on the family's willingness to have the family member declared dead. The State party should ensure that any compensation or other form of redress adequately reflects the gravity of the violation and of the harm suffered.**

27. Recommendation No. 12 of the Human Rights Committee makes reference to article 21 of the Law on the Rights of Demobilized Soldiers and Members of Their Families. The aforementioned Law ceased to be in effect as of 1 May 2010 with the

enactment of the Law on Cessation of the Law on the Rights of Demobilized Soldiers and Members of Their Families (*Official Gazette of the BiH Federation*, No. 9/10).

28. However, article 21, paragraph 4, of the Law on the Rights of War Veterans and Members of Their Families (*Official Gazette of the BiH Federation*, Nos. 33/04, 56/05, 70/07 and 9/10) stipulates the right to a family benefit (*porodična invalidnina*) for the families of missing veterans until missing person is declared dead or by 17 November 2007 at the latest, when the excerpt from the death record shall be obtained pursuant to article 27 of the Law on Missing Persons (*Official Gazette of BiH*, No. 50/04), and in the event that the above excerpt is not provided, the right shall be terminated.

29. Therefore, article 21, paragraph 4, of the Law on the Rights of War Veterans and Members of Their Families is directly related to article 27 of the Law on Missing Persons.

30. In connection with the comments and recommendation No. 12 of the Human Rights Committee, the Federal Ministry for Veterans and Disabled Veterans of the War of Defence and Liberation will, in the framework of amendments to the Law on the Rights of War Veterans and Members of Their Families, discuss recommendation No. 12 with a view to its implementation through amendments to article 21, paragraph 4, of the Law in line with the recommendation.